**FARAD CONTINUATION SHEET NO.**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5348 OF 2005

| Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders. | Court's or Judge's Orders |
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Mr. A.V. Anturkar for the petitioner

Mr. U. Warunjikar for R-1

Mr. M.H. Solkar, AGP

Mr. Hanif Solkar, AGP

**CORAM: SMT. RANJANA DESAI, J.**
1/9/05

**P.C.**:-

The petitioner is original defendant Sanjay Hanumant Deokar in Regular Civil Suit No. 1747 of 2004. The plaintiff therein claims to be the owner of Plot Nos. B & C out of Gat No. 327 situated within the limits of Pimpri Chinchwad Municipal Corporation of village Moshi, Taluka Haveli, District Pune.

2. The suit is filed for a declaration that defendant 1 is not

entitled to carry out blasting operation or drilling (the said operations) anywhere on the west side of the suit property. In this suit an application was preferred by the plaintiff praying for a temporary injunction against the defendants.

3. The case of the plaintiff is that defendant 1 was carrying out the said operations on the suit plot and on the existing road. The trial court by its order dated 9/2/2005 allowed the application and restrained defendant 1 from carrying out blasting, quarry operations or carrying out any drilling or blasting any where on the suit plots and on the existing road as per layout plan till disposal of the suit.

4. The plaintiff carried an appeal to the 8th Ad Hoc Addl. District Judge, Pune being Misc. Civil Appeal No. 57/2005. The lower appellate court partly allowed the appeal and restrained the defendant

from carrying out blasting operations through his agents, servants, representatives on the existing road on western side of suit plot No. 'B' & 'C'. This order is challenged in this writ petition.

5. I have heard the learned counsel appearing for the parties.

6. Before I proceed to deal with the matter I may note that on 25/8/2005 I had directed Shri Solkar, the learned AGP to call the concerned officer with the relevant records to this Court. Mr. Solkar states that by his letter dated 26/8/2005 he had intimated my order dated 25/8/05 to the concerned department and requested it to send the concerned officer to the court. However, no officer is present in the court today. A copy of the said letter is kept on record and marked "X".

7. The learned counsel for the petitioner has drawn my attention to the plaint where in paragraph 3 the

plaintiff has stated that Plot Nos. B & C were allotted by the Collector of Pune to him and plot No. 10 was allotted to defendant 1 in the year 1986 and it is situated on the South West side of the suit property. The learned counsel for the plaintiff confirmed this statement before the court today.

8. The learned counsel for the petitioner contended that the petitioner has no intention of carrying out the said operations on the existing road till the suit is finally decided. He submitted that plot No. 10 belonging to him is situated on the South West side of the suit property. He submitted that the averment made by the plaintiff in paragraph 3 of the plaint bears out this submission. He submitted that the petitioner has the necessary permission to carry out the said operations. He submitted that the impugned order of the learned Judge has prevented him from carryinng out blasting operation anywhere on the

existing road on western side of suit Plot Nos. B & C, This order results in preventing the petitioner from carrying out the blasting operation on his own plot No. 10 though he has necessary permission from the Government.

9. The lower appellate court has restrained the petitioner from carrying out the said operations anywhere on the existing road on the western side of plot Nos. B & C. The words anywhere on the existing road on the western side of suit plot Nos. B & C should obviously not be interpreted to mean that the petitioner is not only restrained from carrying out the said operations on the existing road on the western side of plot Nos. B & C, but he is restrained from carrying out the said operations anywhere on the western side. The plaintiff has stated in the plaint that the petitioner’s plot No. 10 is situated on the south west side of the suit plots. If the petitioner’s plot is situated on the

south-west side of suit plots and he undertakes not to carry out the said operations on the existing road on the western side of plot Nos. B & C pending the suit, there is no reason to prevent him from carrying out the said operations on his plot if he has requisite permission/licence for the same. Morever Mr. Anturkar the learned counsel for the petitioner has stated that the petitioner has no intention to carry out the said operations on the suit plots. He has further stated that the petitioner has no intention to caryout the said operations on the existing road on the western side of the suit plots B & C till the suit is finally decided. In the circumstances of the case, therefore, the following order which shall operate pending the suit shall meet the ends of justice.

a) The petitioner shall not carry out the said operations on the existing road on the western side of the suit plots. However, this does not prevent the petitioner from

carrying out the said operations on plot No. 10 which according to him is allotted to him and which is situated on the south west side of the suit plots, if he has the requisite permission/licence for carrying out the said operations.

b) It will however, be open to the State Government to take necessary action against the petitioner if it is found that the petitioner does not have the necessary permission/ licence for carrying out the said operations.

c) The impugned order is modified to the above extent.

d) No opinion is expressed on the merits of the case.

e) Writ petition is disposed of in the aforestated terms.

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